

RULE 56.1 STATEMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAMON MORALES,

Plaintiff,

- against -

5 BROTHERS RESTAURANT, INC.,
OLD TOWN, INC., and DENNIS D'ONOFRIO,

Defendants.
-----X

Civil Case No.: 2:14-cv-04702
(LDW)(ARL)

**DEFENDANTS' RULE 56.1
STATEMENT IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Defendants, 5 Brothers Restaurant, Inc., Old Town, Inc., and Dennis Donofrio, by their attorneys, Wickham, Bressler & Geasa, P.C., pursuant to Local Civil Rule 56.1 for the Eastern District of New York set forth the material facts as to which there is no genuine issue to be tried and the evidence supporting same:

1. Plaintiff was employed by Old Town, Inc. at the business known as Old Town Pizza in Port Jefferson Station, New York on April 15, 2012 and began work on April 17, 2012 as a dishwasher. (Donofrio affidavit ¶3, Plaintiff's Ex. 4)

2. Plaintiff's place of employment was always at Old Town Pizza at Port Jefferson Station. (Donofrio Affidavit ¶3, Plaintiff's deposition, p. 12, l. 2-4)

3. At the time of plaintiff's employment he received from Old Town, Inc. a disclosure statement which stated his compensation to be \$7.25 per hour (and time and one-half for overtime) which he signed. (Plaintiff's answer to Interrogatory #11, Donofrio Affidavit ¶3, Ex. A to Donofrio Affidavit Plaintiff's Ex. 4 Bates #000109)

5. Plaintiff was paid at the rate of \$7.25 per hour and applicable overtime therefor until January 1, 2013. (Donofrio Affidavit ¶4, Time and earnings records Bates #000111-000229 Exhibit B to Donofrio Affidavit)

6. On March 15, 2013 plaintiff received from Old Town, Inc. a disclosure statement which stated his compensation to be \$8.00 per hour (plus time and one half for overtime) which he signed. (Donofrio Affidavit ¶6, Plaintiff's Ex. 5 Bates #000110)

7. Plaintiff was paid at the rate of \$8.00 per hour plus overtime from January 1, 2013 until his termination of employment. (Donofrio Affidavit ¶6, Exhibit C to Donofrio Affidavit, Plaintiff Ex. 5 Bates #000110)

8. Plaintiff's employment was terminated as of the end of July 17, 2014, his last day of work. (Donofrio Affidavit ¶7)

9. Plaintiff described the reason for his termination of employment as his ill health. (Plaintiff's deposition, p. 22, l. 23, p. 23, l. 3)

10. During 2013 plaintiff never complained to defendants about his compensation. (Donofrio Affidavit ¶7, Plaintiff's deposition, p. 28, l. 11-15)

11. During 2014 plaintiff never complained about his compensation to defendants. (Donofrio Affidavit ¶7, Plaintiff's deposition, p. 28, l. 16-20)

12. Each day of plaintiff's work at Old Town, Inc. was recorded as to arrival and departure by virtue of a computer point of sale system which generated a written record. (Donofrio Affidavit ¶4, Plaintiff's deposition, p. 16, l. 3-24)

13. The first day of plaintiff's employment as recorded by Old Town, Inc.'s computer point of sale system was April 17, 2012. (Donofrio Affidavit ¶3, Bates #000109)

14. The last day of plaintiff's employment was recorded by Old Town, Inc.'s computer point of sale system as July 17, 2014. (Donofrio Affidavit ¶7, Bates #000110)

15. Plaintiff is seeking liquidated damages on his FLSA minimum wage claim. (Amended complaint ¶34)

16. Plaintiff is seeking liquidated damages on his NYSSL minimum wage claim.

(Amended complaint ¶44)

17. Plaintiff is seeking liquidated damages on his FLSA overtime wage claim.

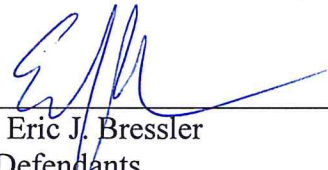
(Amended complaint ¶39)

18. Plaintiff is seeking liquidated damages on his NYSSL overtime claim. (Amended complaint ¶48)

Dated: January 15, 2016
Mattituck, New York

WICKHAM, BRESSLER & GEASA, P.C.

By: _____


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ejb/clt/Donofrio Dennis/Rule 56.1 Statement